

Matthew P. Kremer
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2061
Email: mkremer@omm.com

Attorneys for [24]7.ai, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
In re:

SEARS HOLDING CORPORATION, <i>et al.</i> ,	:	Case No. 18-23538 (RDD)
Debtors.	:	(Jointly Administered)
	:	

-----X
OBJECTION TO CURE AMOUNT AND RESERVATION OF RIGHTS
[24]7.ai, Inc., formerly known as 24/7 Customer, Inc. (24-7), through its undersigned
counsel, respectfully submits this Objection to Cure Amount and Reservation of Rights and
states as follows:

1. 24-7 is a customer acquisition and engagement company that provides services to
Sears Holdings Management Corporation (the “Debtor”) pursuant to that certain Master
Outsourced Services Agreement between the Debtor and 24-7 dated as of April 2, 2012, as
amended (the “MSA”). A true and correct copy of the MSA is attached hereto as **Exhibit A**.

2. Pursuant to the MSA, the Debtor and 24-7 executed various Statement of Works (“SOWs”) setting forth specific business process services to be performed by 24-7 under the MSA. *See* Ex. A at pp. 1–3.

3. As of the Petition Date, 24-7 held an unsecured claim against the Debtor in an amount not less than \$2,674,611.53 based on pre-petition services performed under the MSA.¹

4. A summary of outstanding invoices for services performed by 24-7 for the benefit of the Debtor pursuant to the MSA is attached hereto as **Exhibit B**.

5. True and correct copies of the outstanding invoices are attached hereto as **Exhibit C**.

6. 24-7 continues to provide post-petition services to the Debtor.

7. On or about January 18, 2019, the Debtor served its *Notice of Cure Costs and Potential Assumption of Executory Contracts and Unexpired Leases In Connection With Global Sale Transaction*, D.I. 1731 (the “Notice”) on 24-7.

8. In the Notice, the Debtor lists the MSA and certain SOWs among the executory contracts subject to potential assumption by the Debtor in connection with a global sale transaction. D.I. 1731 at 8–9. The entries in the Notice related to 24-7 appear as follows:

19	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	HOME SERVICES - 24_7 CUSTOMER INC - MASTER AGREEMENT - 2012	4/1/2012	03/31/2021	CW2201110	\$ 2,668,113
20	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	HOME SERVICES - 24_7 CUSTOMER INC - SOW 10 - 2012	4/1/2012	01/31/2019	CW2201141	\$ -
21	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	HOME SERVICES - 24_7 CUSTOMER INC - SOW 3 - 2012	4/1/2012	01/31/2019	CW2201143	\$ -
22	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	HS OPS-24-7 CUSTOMER INC-MASTER OUTSOURCED SERVICES AGREEMENT-2012	4/1/2012	01/31/2022	SHCLCW3687	\$ -
23	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	HOME SERVICES - 24_7 CUSTOMER INC - SOW 9 - 2015	12/3/2014	01/31/2019	CW2308201	\$ -
24	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	MSO - 24-7 CUSTOMER - SOW 7 INTELLIRESPONSE VIRTUALAGENT - 20150724	7/24/2015	01/31/2021	CW2303398	\$ -

¹ 24-7 has submitted a proof of claim to Prime Clerk LLC, the claims administrator for the Debtor, stating the amount of its claim and providing copies of outstanding invoices for services provided to the Debtor pursuant to the MSA. As of the date of this filing, 24-7’s proof of claim has not been docketed on the claims register.

25	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	CORPORATE SERVICES - MSO CASE MANAGEMENT SOW 14 - 24_7 CUSTOMER INC 2016	1/31/2016	01/31/2019	CW2309719	\$ -
26	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	CORPORATE SERVICES - MSO ONLINE CHAT AND EMAIL - SOW 12 - 24_7 CUSTOMER INC 2016	1/31/2016	01/31/2019	CW2309715	\$ -
27	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	CORPORATE SERVICES - MSO CS CHAT AND EMAIL SOW 13 - 24_7 CUSTOMER INC - 2016	1/31/2016	01/31/2019	CW2309717	\$ -
28	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	CORPORATE SERVICES - MSO PARTS DIRECT CHAT SOW 11 - 24_7 CUSTOMER INC - 2016	1/31/2016	01/31/2019	CW2309712	\$ -
29	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	CORPORATE SERVICES - MSO REPAIRS CHAT SOW 10 - 24_7 CUSTOMER, INC - 2016	1/31/2016	01/31/2019	CW2309702	\$ -
30	SEARS HOLDINGS MANAGEMENT CORPORATION	24/7 CUSTOMER INC-1000645887	MSO - 24_7 CUSTOMER - SOW 16 SEA CHAT - 20161001	10/1/2016	01/31/2021	CW2319313	\$ -
31	SEARS HOLDINGS MANAGEMENT CORPORATION	[24]7.AI, INC. (FORMERLY 24/7 CUSTOMER, INC.)		11/17/2018	1/31/2022	CW2340797	\$ -
32	SEARS HOLDINGS MANAGEMENT CORPORATION	[24]7.AI, INC. (FORMERLY 24/7 CUSTOMER, INC.)		11/17/2018	1/31/2022	CW2340799	\$ -
33	SEARS HOLDINGS MANAGEMENT CORPORATION	[24]7.AI, INC. (FORMERLY 24/7 CUSTOMER, INC.)		11/17/2018	1/31/2022	CW2340801	\$ -
34	SEARS HOLDINGS MANAGEMENT CORPORATION	[24]7.AI, INC. (FORMERLY 24/7 CUSTOMER, INC.)		11/17/2018	1/31/2022	CW2340803	\$ -
35	SEARS HOLDINGS MANAGEMENT CORPORATION	[24]7.AI, INC. (FORMERLY 24/7 CUSTOMER, INC.)		4/1/2012	1/31/2022	SHCLCW3687	\$ -
36	SEARS HOLDINGS MANAGEMENT CORPORATION	[24]7.AI, INC. (FORMERLY 24/7 CUSTOMER, INC.)		4/1/2012	1/31/2022	SHCLCW3687	\$ -

Objection to Cure Amount

9. 24-7 objects to the cure amount stated in the Notice with respect to the MSA.

According to the Notice, this amount is \$2,668,113. *Id.* at 8. The correct cure amount with respect to the MSA is \$2,674,611.53. *See* Exs. B, C.

Reservation of Rights

10. Further, 24-7 objects to the characterization of the individual SOWs listed on the Notice as “executory contracts,” separate and apart from the MSA, subject to potential assumption by the Debtor in connection with a sale transaction without also assuming the MSA. Any and all SOWs executed by 24-7 and the Debtor are an integrated part of, and indivisible from, the MSA.² A “debtor may not assume parts of a single, indivisible agreement while rejecting other parts. It must assume or reject an indivisible agreement *in toto*.” *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB), 2013 WL 2663193, at *3 (Bankr. S.D.N.Y. June 13, 2013); *In re Teligent, Inc.*, 268 B.R. 723, 728 (Bankr. S.D.N.Y. 2001) (a debtor “must assume or reject the entire contract”); *In re AbitibiBowater Inc.*, 418 B.R. 815, 823 (Bankr. D. Del. 2009)

² The MSA provides that “[t]he parties intend to enter into a written statement of work (each a ‘SOW’) which must be signed by both parties to be effective, before Supplier provides any Services to Customer or its Authorized Users. All Services will be subject to the terms of this Agreement ... [and] the Master Agreement shall control over any inconsistent terms of an SOW [.]” *See* Ex. A at pp. 2-3.

("[A]ll of the contracts that comprise an integrated agreement must either be assumed or rejected, since they all make up one contract.”).

11. Accordingly, 24-7 hereby reserves all rights to object to the Debtor's assumption of any individual SOWs, or any of the MSA's individual provisions, without also assuming the MSA in full. The MSA must be assumed, if at all, in its entirety.

Dated: January 25, 2019
New York, New York

Matthew P. Kremer
O'MELVENY & MYERS LLP
Matthew P. Kremer
Times Square Tower
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2061
Email: mkremer@omm.com

Jennifer Taylor
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: (415) 984-8900
Facsimile: (415) 984-8701
E-Mail: jtaylor@omm.com

Darren L. Patrick
400 South Hope Street
Los Angeles, CA 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
E-mail: dpatrick@omm.com

Attorneys for [24]7.ai, Inc.

CERTIFICATE OF SERVICE

I, Matthew P. Kremer, hereby certify under the penalty of perjury that on January 25, 2019, I caused a copy of this Objection to Cure Amount and Reservation of Rights (the “Objection”) to be electronically filed with the Clerk of Court using the CM/ECF System and to be served via this system on all parties who have consented to electronic service.

I further certify that I served the Objection by email on the following “Objection Recipients,” as identified in Exhibit 1 to this Court’s *Order Approving Global Bidding Procedures and Granting Related Relief*, D.I. 816:

I. Bid Notice Parties

a. Debtors

Rob Riecker: rob.riecker@searshc.com
Luke Valentino: luke.valentino@searshc.com
Mohsin Meghji: mmeghji@miiipartners.com
General Counsel: counsel@searshc.com

b. Debtors’ counsel

Ray Schrock, Esq.: ray.schrock@weil.com
Jacqueline Marcus, Esq.: jacqueline.marcus@weil.com
Garrett A. Fail, Esq.: garrett.fail@weil.com
Sunny Singh, Esq.: sunny.singh@weil.com
Ellen J. Odoner, Esq.: Ellen.Odoner@weil.com
Gavin Westerman, Esq.: Gavin.Westerman@weil.com

c. Debtors’ investment banker:

Brandon Aebersold and Levi Quaintance: project.blue.rx@lazard.com

II. Buyer Parties

a. Buyer

Kunal S. Kamlani: kunal@eslinvest.com

Harold Talisman: harold@eslinvest.com

b. Counsel

Christopher E. Austin, Esq.: caustin@cgsh.com

Benet J. O'Reilly, Esq.: boreilly@cgsh.com

Sean A. O'Neal, Esq.: soneal@cgsh.com

III. Consultation Parties

a. Bank of America

Paul Leake, Esq.: Paul.Leake@skadden.com

Shana Elberg, Esq.: Shana.Eiberg@skadden.com

George Howard, Esq.: George.Howard@skadden.com

b. Wells Fargo Bank

Kevin J. Simard, Esq.: ksimard@choate.com
Jonathan D. Marshall, Esq.: jmarshall@choate.com

c. Committee

Ira S. Dizengoff, Esq.: idizengoff@akingump.com
Philip C. Dublin, Esq.: pdublin@akingump.com
Abid Qureshi, Esq.: aquireshi@akingump.com
Sara L. Brauner, Esq.: sbrauner@akingump.com

Dated: January 25, 2019
New York, New York

/s/ Matthew P. Kremer

Matthew P. Kremer